Supreme Court, U.S.
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No. _____

IN THE
# Supreme Court of the United States

Viveca Sanai, Cyrus Sanai, and Fredric Sanai,
*Petitioners,*

v.

Sassan Sanai, et. al.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Did the Ninth Circuit Court of Appeals err when it followed its existing published precedent which holds, contrary to every other federal and state appellate court to have considered the issue, that the "collateral bar doctrine" prohibits review of the merits of an order which is the subject of a subsequent criminal contempt conviction where the appellant had no prior opportunity for meaningful appellate review of such order?

2. Did the Ninth Circuit Court of Appeals err when it adopted the Third Circuit Court of Appeal's minority position that an order barring a federal court litigant from seeking relief in parallel state court proceedings is not a directly appealable order?

3. Did the Ninth Circuit Court of Appeals err when it applied its recent published precedent holding that the *Rooker-Feldman* doctrine forbids federal court lawsuits which affect ongoing state court proceedings that have neither concluded nor are ripe for review by this Court?

4. Did the Ninth Circuit Court of Appeals err when it held that *Younger* abstention bars a lawsuit under 42 U.S.C. §1983 seeking injunctive and declaratory relief against post-judgment state court proceedings conducted by a judicial official who is an employee of the opposing private party and who was a witness at the trial of the proceeding?

## PARTIES TO THE CASE

This petition is from a single unpublished decision of the Ninth Circuit Court of Appeals which decided four appeals, two of which were consolidated, arising from four separate actions, two of which were consolidated.

The two consolidated appeals, 03-35797 and 03-35932 are from a district court proceeding which itself is the consolidation of a federal question lawsuit, CV-02-2165-TSZ and a diversity lawsuit, CV-02-2560TSZ. The plaintiffs in lawsuit CV-02-2165-TSZ are Viveca Sanai, Cyrus Sanai, Fredric Sanai, Ingrid Buron and Daria Sanai. The defendants in CV-02-2165-TSZ are Sassan Sanai, Mary McCullough, and Internal Medicine & Cardiology, Inc. The plaintiffs in CV-02-2560TSZ are Cyrus Sanai and Fredric Sanai. The defendants are Sassan Sanai, Mary McCullough, Internal Medicine & Cardiology, Inc., William Sullivan, and Marsh, Mundorf, Pratt, Sullivan & McKenzie.

Appeal 04-35041 is from the final judgment in action CV-03-02781-JCC. The plaintiffs in that case are Fredric Sanai and Viveca Sanai. The defendants are Geoffrey Crooks, Joseph Thibodeau, Anne Ellington, Martin Appelwick and William Baker.

Appeal 04-35881 is from action CV-04-01594-TSZ. The plaintiffs in that case are Viveca Sanai, Cyrus Sanai and Fredric Sanai. The defendants are Sassan Sanai, Mary McCullough, Philip Maxeiner, William Sullivan, and Marsh, Mundorf, Pratt, Sullivan & McKenzie.

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This case presents three different legal questions concerning federal procedural and jurisdictional law that have been the subject of multiple decisions by this Court and the federal appellate courts. On these three questions the Ninth Circuit Court of Appeals' published decisional law breaks with the law of other circuits. In addition, this petition presents a fourth question that does not present a circuit conflict as much as the Ninth Circuit deliberately ignoring this Court's binding precedent.

The first question concerns the collateral bar rule, which provides that a party appealing a

criminal contempt conviction may not challenge the validity of the court order which the appellant was convicted of violating. This Court has twice stated that the collateral bar rule only applies to orders which the appellant had a prior opportunity to challenge by meaningful appellate proceedings. *See Walker v. City of Birmingham,* 388 U.S. 307, 319 (1967); *U.S. v. Ryan,* 402 U.S. 530, 532 n.4 (1971). Based on this Court's statements of law, every federal court of appeal to address this issue, but one, has held that the collateral bar doctrine only applies to orders which the appellant had a prior opportunity to challenge by meaningful appellate proceedings. *See U.S. v. Dickinson,* 465 F.2d 496, 511 (5th Cir. 1972); *U.S. v. Cutler,* 58 F.3d 825, 832-833 (2d Cir. 1995); *Matter of Providence Journal Co.,* 820 F.2d 1342, 1346-47 (1st Cir. 1986), *modified,* 820 F.2d 1354 (1st Cir. 1987) (in banc); *In re Novak,* 932 F.2d 1397, 1401 (11th Cir. 1991). The Ninth Circuit is the exception, holding that a meaningful prior opportunity for appellate review is not required for the collateral bar rule to apply. *In re Establishment Inspection of Hern Iron Works, Inc.,* 881 F.2d 722, 725-26 (9th Cir. 1989). Thus under Ninth Circuit precedent a district court's illegal but unappealable order may never be effectively challenged until the entire litigation is concluded.

The second question presented to this Court arises from the order that two of the Petitioners were convicted of violating. This order barred Petitioners from exercising a *lis pendens* remedy in state court divorce proceedings. The Petitioners appealed the first order dated May 15, 2003, which they were convicted of violating, and separately

appealed the second, reissued order made at the time of the conviction. Pet. App. C2-3. The first appeal was dismissed by the Ninth Circuit without explanation. The appeal of the second order was also dismissed, on the grounds that the order did not constitute an appealable injunction or collateral order. In so ruling, the Ninth Circuit Court of Appeals joined the Third Circuit Court of Appeals, which holds that an injunction barring a federal court litigant from filing a lawsuit or otherwise seeking a remedy in parallel state court proceedings is not an appealable order unless that specific remedy is prayed for by the moving litigant in its complaint. *Hershey Foods Corp. v. Hershey Creamery Co.*, 945 F.2d 1272, 1278 (3d Cir. 1991). This view has been rejected by the First, Second, Fifth, Sixth, Seventh, Tenth, and Federal Circuits, all of which hold that an order preventing a party from seeking relief in state court is an immediately appealable order. *See, e.g., FDIC v. Santiago Plaza, Inc.*, 598 F.2d 634, 635-636 (1st Cir. 1979); *HBE Leasing Corp v. Frank*, 48 F.3d 623, 632 n.6 (2d Cir. 1995); *Phillips v. Chas. Schreiner Bank*, 894 F.2d 127, 130 (5th Cir. 1990); *AmSouth Bank v. Dale*, 386 F.3d 763, 772-774 (6th Cir. 2004); *Asset Allocation & Mgmt. Co. v. W. Employers Ins. Co.*, 892 F.2d 566, 568 (7th Cir. 1989); *MAI Basic Four, Inc. v. Basis, Inc.*, 962 F.2d 978, 981-3 (10th Cir. 1992); *Katz v. Lear Siegler, Inc.*, 909 F.2d 1459, 1461 (Fed. Cir. 1989).

The reason that Viveca sought to file a notice of *lis pendens* was to ensure that she would be able to reverse the sale of the subject property. This sale was being conducted in state court divorce

proceedings by a specially appointed judicial officer, Philip Maxeiner. Maxeiner is the accountant of Viveca's former husband, Defendant and Respondent Sassan Sanai. He was a witness for Sassan in the divorce proceedings. Despite all of this, the Washington State trial court appointed Maxeiner as a "special master" to adjudicate certain issues and carry out the orders of the court in relation to the divorce. Viveca appealed this order in state court. The state courts disqualified her counsel, Fredric Sanai, then elevated Maxeiner to the position of a judicial referee, declining to even address Viveca's arguments that Maxeiner's financial interest in the litigation, arising out of his concurrent employment as Sassan's accountant, made his appointment a violation of the Fourteenth Amendment.

With no effective recourse available to combat the state court appointments of an agent of the opposing side as a judicial officer, as no local counsel would risk the wrath of the local judiciary to attack Maxeiner's obviously unconstitutional appointment, Petitioners filed an action in federal court collaterally attacking the disqualification under 42 U.S.C. §1983. The district court dismissed the action on the basis of the *Rooker-Feldman* doctrine. The Ninth Circuit Court of Appeals upheld the application of *Rooker-Feldman* based on its published decision in *Mothershed v. Justices of the Supreme Court*, 410 F.3d 602, 606-07 (9th Cir. 2005). In *Mothershed*, the Ninth Circuit Court of Appeal interpreted this Court's decision in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005) to permit application of the *Rooker-Feldman* doctrine in any case where a state court had decided

a single federal question, even if the state court proceedings continue and other federal questions remain to be determined. This interpretation of *Exxon Mobil* directly conflicts with the interpretation of the First Circuit, which held that *Rooker-Feldman* only applies if the case has terminated or is ripe for review by this Court. *Federacion de Maestros de Puerto Rico v. Junta de Relaciones del Trabajo de Puerto Rico,* 410 F.3d 17 (1st Cir. 2005).

The fourth question presented arises from a separate suit seeking, *inter alia*, to preliminarily enjoin Maxeiner from acting as a judicial official in the case under 42 U.S.C. §1983. The trial court and Court of Appeal both held that this suit was barred under *Younger* abstention. In so doing, they refused to acknowledge the existence of this Court's binding precedent which holds a suit seeking to enjoin a state judicial official from acting in lawsuit in which that official has a financial conflict of interest an "extraordinary circumstance" which causes *Younger* abstention to be inapplicable as a matter of law. *See Gibson v. Berryhill*, 411 U.S. 564, 578-79 (1973).

## OPINIONS BELOW

The Ninth Circuit opinion dated August 17, 2005, Pet. App. A, is unpublished, but may be found at 2005 U.S. App. LEXIS 17785 and 141 Fed. Appx. 67. The Ninth Circuit's October 24, 2005 order denying the petitions for rehearing and rehearing en banc, App. B, is unpublished.

This Memorandum Decision disposed of four separate appeals. The first two appeals, 03-35797 and 03-35932, arose from a trial court proceeding